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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1267

NEWSPAPER DRIVERS & HANDLERS' LOCAL UNION NO. 372, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, IND., PETITIONER

-vs-

NATIONAL LABOR RELATIONS BOARD, DETROIT NEWSPAPER PUBLISHERS ASSOCIATION, EVENING NEWS ASSOCIATION, Owner and Publisher of The Detroit News, and KNIGHT NEWSPAPERS, INC., Owner and Publisher of The Detroit Free Press, RESPONDENTS

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

This Brief is filed on behalf of Respondents, Detroit Newspaper Publishers Association ("Association"), Evening News Association, owner and publisher of The Detroit News ("the News"), and Knight Newspapers, Inc., owner and publisher of The Detroit Free Press ("the Free Press"), in opposition to the Petition for a Writ of Certiorari by Newspaper Drivers & Handlers' Local Union No. 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. ("Local 372"). Respondent, the National Labor Relations Board, will be referred to herein as "the Board".

QUESTION PRESENTED

The Questions presented by Petitioner are unacceptable (Pet. 3).[1] Both questions disregard the express findings of the Board and are premised on contentions rejected by the Board and the Court below. The sole question posed by this case is the following:

> Whether Respondent, the News, under threat of strike and after a bargaining impasse had been reached, violated Sections 8(a)(1) and (3) of the Act[2] by temporarily shutting down its operations and laying off its employees to bring economic pressure to bear in support of its own legitimate bargaining position?

This question was decided adversely to the Petitioner by the Board and Court below.

STATEMENT

This was a Section 8(a)(1) and (3) charge under the National Labor Relations Act, involving alleged misconduct by Respondents during the course of bargaining in 1961-1962 with 14 unions for 21 different contracts (A-10, 52).[3] Good faith bargaining under Section 8(a)(5) was not an issue. Likewise conceded was the absence of any evidence of interference, restraint or coercion of employees' Section 7 rights independent of the temporary layoff by the News. (A-30, 72).

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[1] "Pet." refers to the Petition for a Writ of Certiorari filed herein and to the page number thereof.

[2] National Labor Relations Act, as amended (herein referred to as "the Act"); § 8(a), 61 Stat. 140, 29 U.S.C. § 158(a) (1958 ed.); cf Appendix H to Petition, A-99.

[3] "A-" refers to Petitioner's Appendix and the page number thereof.

After six years of litigation and review[4], only one issue remains (A-9, 14). This involves the propriety of a four-day temporary layoff or lockout by the News occasioned by its bargaining with Local 372 for a new contract. After remand by this Court, the Board, applying *American Ship Building*[5] as directed by the mandate, found that the News' conduct did not violate Sections 8(a)(1) and (3). This finding was affirmed by the Court below.

The News and Free Press, the only large daily Detroit newspapers, bargain concurrently for new contracts with numerous unions representing employees of one or both newspapers. They are the only members of the Association which handles their labor relations. Most such bargaining is on a multi-employer basis but Local 372 has bargained separately for the more than 20 years that it has represented distribution employees of both papers. Local 372's members perform substantially similar functions at both papers and have historically expected and received similar economic treatment in their contracts. Common to the bargaining for both contracts are the two full-time officers of Local 372 and the Association Secretary. The latter informs each Publisher of the progress of bargaining with the other and the Publishers themselves, on occasion, meet to discuss common issues. (A-10, 26, 27, 37).

The instant dispute commenced in October, 1961 with notification by Local 372 to both papers of its desire to

[4]Trial Examiner's Intermediate Report (1963) (Pet. App. G, A 45-98); *Detroit Newspaper Publishers Assn., et al*, 145 NLRB 996 (1964) (Pet. App. G, A 33-44); enforcement denied, *Detroit Newspaper Publishers Assn. v. NLRB*, 346 F. 2d 527 (1965) (Pet. App. F, A 25-32); vacated and remanded *sub nom Newspaper Drivers & Handlers v. Detroit Newspaper Publishers Assn.*, 382 U.S. 374 (1966) (Pet. App. E, A 24); Supplemental Decision and Order, 166 NLRB No. 6 (1967) (Pet. App. B, A 9-21); petition for review denied *sub nom Newspaper Drivers & Handlers v. NLRB*, 404 F. 2d 1159 (1968) (Pet. App. A, A 1-8).

[5]*American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965).

reopen the contracts expiring on November 15, 1961 (A-10, 11). Prior to expiration, Local 372 also gave requisite notice to state and federal mediation to clear the decks for strike action against both papers under Section 8(d)(2) and (4) of the Act. Subsequently, Local 372 rejected a request by Respondents for an extension of the old contracts during bargaining. In December, 1961, after the contracts had expired, Local 372's members gave their negotiating committees strike authority at both papers, which fact was communicated to Respondents (A-18, 60).

Free Press bargaining with Local 372 proceeded normally between October, 1961 and April, 1962 (A-10, 11, 26). On April 6, 1962, Local 372 presented proposals to the Free Press and advised that strike action would result on April 11 if a satisfactory offer were not received by that date. On April 11, the Free Press submitted its "last best offer", which was rejected by Local 372, and a picket line was established at the Free Press that afternoon without further notice to the Publisher. This forced immediate suspension of publication by the Free Press. Petitioner concedes these circumstances created an impasse at the Free Press (Pet. 4).

Petitioner largely neglects the progress of bargaining (or, more accurately, the lack thereof) at the News prior to the impasse and lockout. Commencing in October, 1961 and continuing until January 11, 1962, the bargaining proceeded normally. After January 11, 1962, Local 372 refused to bargain further with the News despite repeated requests (A-11, 16, 27, 60). Except for one abortive session on March 22, at which Local 372 promised to submit contract proposals, there was no further bargaining with the News until after the strike at the Free Press on April 11.

After the Free Press had received its strike ultimatum, the News and Free Press met on April 9 to discuss union demands of common interest (A-11, 12, 27). The News,

after reviewing the common issues remaining, concluded that three such issues were of vital importance to its own bargaining with Local 372 (A-8, 11). The News stated that if the Free Press were struck over these three demands the News would not publish. It is important to note that the News position was that it would cease publication. There was no statement or undertaking by it to lock out its employees. That decision, made by the News unilaterally, was not reached until April 15.

April 12, the morning after the Free Press strike, the News received the proposals which Local 372 had promised on March 22 (A-11). These contained the identical three key demands made of the Free Press (A-4, 8, 12). This was prior to any suspension of publication or lockout by the News. The News thereafter suspended publication but its employees reported for work and were paid (A-12).

Following the suspension of publication, Local 372's International President, Mr. Hoffa, took charge of the negotiations and scheduled meetings through the Association with both papers (A-12, 27-28, 64). In this connection he informed the Association Secretary that (A-3, 12):

> "The News had better be present . . . because the issues at the News would have to be settled or *they'd be on strike also.*"

On April 14, following a Free Press session which resulted in no progress, Mr. Hoffa met with the News. At the conclusion of that meeting, Hoffa announced that he would take the "company's last proposal" (a proposal made four months before in December, 1961) to the membership despite protests by the News that this was not their last or best proposal and that they were willing to continue negotiations. Hoffa's reply was to the effect that "regardless of whether it is the best proposal . . . this is your final best offer and it is going to be submitted to the union" (A-12, 13, 16). Since Local 372 had already rejected

an even better offer from the Free Press, similar rejection of this old offer was a foregone conclusion. No further meetings were scheduled. Confronted with this situation, the News on April 15 decided to temporarily lay off its employees commencing April 16, and they were notified accordingly (A-12, 27).

One of many misstatements by Petitioner is that following the April 14 meetings, negotiations were "recessed" until April 18 (Pet. 6). There was no "recess". As noted above, Mr. Hoffa refused to continue negotiations and no further meetings were scheduled. What did take place is undisputed. On April 16, Respondents proposed to Hoffa mediation by *a third party of his choice* (R. Vol. V—1000a).[6] The next day the parties agreed to mediation which resulted in an agreement settling the critical issues, thus ending the strike and lockout on April 19, 1962 (A-3, 13-14).[7]

ARGUMENT

The Petition is based in its entirety on two assumptions of fact which are contrary to the express findings of the Board, affirmed by the Court of Appeals. Petitioner's

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[6] Reference is to Record below, the volume number and the page thereof.

[7] Another misstatement is that, although Local 372 was able to strike the Free Press, its agreement with the News prohibited strike action, and required arbitration of all unresolved issues (Pet. 5). This contention has been considered by the Board and the Court below both before and after remand. It has been rejected every time. The short answer lies in Local 372's own actions which were at variance with any such claim. Prior to expiration of the old News contracts, requisite notice was given by Local 372 to permit strike action, the contract was allowed to expire and Local 372 refused the News' request to extend it during bargaining. Local 372's members voted overwhelmingly to strike the News and Mr. Hoffa specifically threatened the News with a strike. At no time during negotiations with the News was mention made by Local 372 of arbitration.

approach accordingly violates the basic precepts for review of Board decisions, long since firmly established by this Court. These precepts are particularly applicable to the instant case which has been the subject of repeated review by the Board, by the Court of Appeals and by this Court over the past six years.

The full Board, in obedience to the mandate of this Court, reconsidered the issues in the light of *American Ship Building*, made its findings and dismissed the complaint. The Court below affirmed these findings of the full Board and denied Local 372's petition for review. Despite this, Petitioner continues its attack on such findings in this Court.

It is elementary that the weighing of conflicting evidence is for the Board and not for the courts, that the inferences to be drawn from the evidence are to be drawn by the Board, and not by the courts, and that the Board's findings are conclusive when supported by substantial evidence. *Medo Corp. v. NLRB*, 321 U.S. 678, 681; *Universal Camera Corp. v. NLRB*, 340 U.S. 474. It is equally clear that the determination whether there is substantial evidence to support such findings is a question for the Courts of Appeal and not for this Court except in rare instances. *Universal Camera*, cited, at 491. Petitioner likewise ignores another basic precept which this Court has made plain, i.e., that the Board's judgment or expertise should rarely be disturbed. *NLRB v. United Insurance Co.*, 390 U.S. 254, 260; *NLRB v. Truck Driver's Local 445* (Buffalo Linen), 353 U.S. 87,96.

Petitioner's first false assumption is that the temporary layoff occurred "prior to an impasse in bargaining" (Pet. 3) and the Petition proceeds "on the basis that there was no impasse between the News and Local 372" (Pet. 9).

The Board's finding, in the circumstances of this particular case, was that, prior to the lockout, both the News

and Local 372 "viewed their negotiations as being *deadlocked* on key issues, and that neither doubted that a work stoppage would be required to break the *deadlock*" (A-16). In affirming this finding, the Court below correctly observed that "the words 'deadlock' and 'impasse' are synonymous" (A-2).[8]

Petitioner's second false assumption is that the purpose of the lockout was "to bring pressure upon employees of another employer (The Free Press) who are on strike" (Pet. 3).

Again, the Board's finding is diametrically opposed. After reviewing the essential facts, it found that "The interest of the News in using economic pressure to implement its own bargaining was thus grounded upon *a very real, direct and immediate bargaining motivation in its own behalf*" (A-18). This finding, fully supported by the record, was likewise affirmed (A-4).

The Board and the Court below were clearly correct in their application of *American Ship Building* to this case. All of the critical factors present in that case were present here—if anything in greater degree. As the Board said (A-17, 18):

"We are convinced that the circumstances of this

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[8] As respects the prior position of the parties on the question of impasse, the Petition is equally incorrect. It is claimed that all parties in the original proceedings took the position that there was no impasse between Local 372 and the News (Pet. 8). The fact is that the parties took *no* position on this issue prior to *American Ship Building* (A-15, 16). That decision came down after submission of the case to the Court on the first occasion (346 F. 2d 527). Although the Sixth Circuit's decision postdated *American Ship Building*, it was reached without benefit of briefing or argument by any party as respects the impasse issue. After remand by this Court, the Board considered the presence or absence of an impasse for the first time. It reached its decision only after full consideration of all the claims now urged by Petitioner.

case show both a significant economic justification for the lockout, and a lack of conduct significantly prejudicial to union (or employee) interests. Here, Respondent News had bargained for many months with the Union, and the parties were deadlocked on significant issues. Apart from the interest of the News in supporting the Free Press, the News, like the Free Press, was engaged in bargaining at the same time with its contract having expired on the same date, and with the key demands of the Union being pressed upon each employer simultaneously. The Union had suspended negotiations with the News, and Teamster President Hoffa had explicitly threatened a strike against the News, armed at the time with a strike authorization by the Teamsters' membership against both papers. The interest of the News in using economic pressure to implement its own bargaining was thus grounded upon a very real, direct, and immediate bargaining motivation in its own behalf."

Similarly, the Court below, in affirming, said (A-4):

"Obviously, the News' lockout had the effect of supporting the bargaining position of the Free Press. The facts of this case, however, make it clear that the News' utilization of economic pressure was not motivated by a concern for the bargaining position of its competitor, the Free Press, but by its own direct and immediate economic interest in the outcome of the negotiations. The News, as well as the Free Press, had been negotiating with the Teamsters for an extended period of time and was faced with the same bargaining demands by the Union. The Teamsters struck the Free Press over some issues which the News considered vital to it."

Petitioner invites the Court to review a case which does not exist. Whatever interest there may be in the legality of the pre-impasse lockout—this is not such a case. It may be worth future consideration whether a disinterested employer may support another in negotiations with which it is not concerned—but that is not this case. The decision in this case, as the Board and Court below

were careful to point out, is limited to and by its own peculiar facts, involves no extension of what this Court held in *American Ship Building*, and therefore poses no new or important question of Federal law.

CONCLUSION

For the reasons above stated, the petition for a writ of certiorari should be denied.

Respectfully submitted

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